

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2127 OF 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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B.B.MAHER

Versus

STATE OF GUJARAT & ANR

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Appearance:

MR YN OZA for Petitioner

MR SR DIVETIA APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/11/98

ORAL JUDGEMENT

Heard learned advocate Mr. J.S.Yadav for the petitioner and learned APP Mr. S.R.Divetia for the respondents.

The petitioner before this court is an aggrieved Police Officer who has been found to be negligent in performing his duties while investigating an offence

which has resulted into acquittal of the accused persons. The learned trial Judge has, in course of the trial, found that the Police Officers viz. the petitioner and two other Police Officers did not act expeditiously so as to bring the offenders to the book. While acquitting the accused persons, the learned trial Judge has made certain observations in respect of the inadequacy of investigation made by the Police Officers and has also suggested that a disciplinary action may be initiated against the erring Police Officers. The learned trial Judge has also observed that the accused persons were detained in police custody for 12 days after their arrest and were ill-treated by the Police Officers. He, therefore, directed the learned Chief Judicial Magistrate, Navsari, to take action against the erring Police Officers in accordance with paragraphs 12 and 14 of the Criminal Manual, 1977.

It appears that on 23rd March, 1988, one Suman Magan of village Kamboya, District-Valsad, was cornered by certain offenders near a canal. The fact was reported to his father Magan Bhana by certain villagers and since then said Suman Magan was found to be missing. On 24th March, 1988, said Magan Bhana along with one Naginbhai Vithal, the Village Police Patel went to Vansda Police Station and submitted a written report which was counter-signed by the Village Police Patel Shri Nagin bhai Vithal. The police was informed regarding the incident in question and of missing of the deceased Suman Magan. The names of the suspects were also disclosed to the police. A statement of Magan Bhana was also recorded by the petitioner who was then in charge of the Police Station and an Entry No. 17/88 was made. Another Police Sub Inspector one Shri S.B.Patel was assigned investigation and after visiting the place of incident, it was noted that no visible signs of any quarrel or murder was present. However, after recording further statements, on 1st April, 1988, offence under sections 302, 201 and 34 IPC was registered against the accused persons. The body of the deceased Suman Magan was found in the canal on 3rd April, 1988.

In course of the trial, the learned trial Judge found that written report submitted by Magan Bhana and counter-signed by Shri Naginbhai Vithal though was kept on the record, no proceeding was initiated on the basis of the said report, nor any investigation was carried on on the basis of the said report. The learned trial Judge has found that the said report (Mark 32/1) disclosed the commission of an offence under section 302 IPC and also disclosed the names of the suspects, and an offence could

have been registered on the basis of the said report. However, since no action was taken on the said report, nor was it produced by the prosecution on the record of the matter until a late stage of the trial, the same could not be treated as a First Information Report, and could not be received in evidence. The learned trial Judge has further observed that had that report been acted upon, the crime could have been detected earlier and proper evidence could have been collected against the culprits. Further, the Investigating Officer one Shri S.B.Patel, a Police Sub Inspector though visited the place of offence, did not take further action till he received the further information. The learned trial Judge has observed that it was the duty of the Investigating Officer to take immediate steps towards detection of crime and the Investigating Officer could not have sat silent after making necessary entries except for recording some more statements. The learned trial Judge was of the view that the negligence on the part of the Police Officers had resulted into the acquittal of the accused persons. The learned trial Judge, therefore, directed that a copy of the judgment be forwarded to the District Superintendent of Police, Valsad, and an action be initiated against the erring Police Officers i.e. Senior Police Sub Inspector, the present petitioner, the Police Sub Inspector Shri S.B.Patel and the Head Constable Bhaskar Omkar. In course of trial, it was also found that the accused persons were detained in police custody for 12 days and were ill-treated. Moreover, it was not disclosed who were the Police Officers who ill-treated the accused persons. The learned trial Judge, therefore, directed the Chief Judicial Magistrate, Navsari, to initiate the action against the erring Police Officers in accordance with paragraphs 12 and 14 of the Criminal Manual as stated hereinabove.

Feeling aggrieved, the Senior Police Sub Inspector who was then in charge of the Police Station, has preferred the present petition and has sought expunction of the observations made against him. He has also prayed for quashing and setting aside the directions issued by the learned trial Judge in respect of disciplinary action against the erring Police Officers, and also in respect of the investigation as regards ill-treatment of the accused persons while in police custody.

Mr. Yadav has submitted that the observations made against the Police Officers more particularly the petitioner herein by the learned trial Judge are unwarranted. He has submitted that merely because the

prosecution has failed, it can not be said that the Police Officers were negligent in carrying out the investigation. The petitioner and other Police Officers have done all that they were required to do upon receiving the complaint. He has submitted that the information as it was furnished to the Police Station was in respect of a person missing and not in respect of murder, there was no reason why the petitioner ought to have registered an offence of murder and ought to have made investigation accordingly. He has further submitted that in any view of the matter, it was the Police Sub Inspector Shri S.B.Patel who was entrusted investigation and in no circumstances the petitioner could have been held negligent even if the investigation were found to be inadequate. Mr. Yadav has next contended that the learned trial Judge has acted beyond his jurisdiction. The learned trial Judge is empowered to conduct the trial and either to acquit or to convict the accused persons. In the present case, the learned trial Judge has acted beyond his jurisdiction and has directed the competent authority to hold a disciplinary action against the petitioner and other Police Officers. Similarly, in directing investigation to be made in respect of the ill-treatment of the accused persons while in police custody also, the learned trial Judge has acted without jurisdiction. He has also contended that the observations made against the petitioners are required to be quashed for non-observance of the principles of natural justice. He has contended that before making any observation against the petitioner, he ought to have been issued a special notice and such an observations could have been made only after affording an opportunity of hearing to the petitioner.

I am afraid, I can not accept the contentions raised by Mr. Yadav. It is not disputed that the petitioner was in charge of the Police Station at the relevant time; that it was he who received the information from Magan Bhana, the father of the deceased; that the said Magan Bhana had given a written report (Mark 32/1) which did disclose the apprehension of Suman Magan having been murdered and it also disclosed the names of the suspects. However, neither the said report was acted upon nor any entry was made in the register in respect of the said report. Further, though the apprehension was voiced by the father of the deceased, the Investigating Officer Shri Patel except visiting the place of incident, did not take further steps to investigate as to what had happened to Suman Magan. In my view, the learned trial Judge is right in holding that immediate steps were required to be taken on presentation

of the written report by Magan Bhana, the father of the deceased. Further, even the Investigating Officer ought to have made intensive investigation and could not have waited till the dead-body was found more than ten days after the date of the incident. It has also been found that the statement of Magan Bhana which was recorded by the petitioner on 24th March, 1988, was not the exact reproduction of the statement made by the said Magan Bhana. Said Magan Bhana as well as the Police Patel Naginbhai Vithal have deposed before the court that Magan Bhana had not given the statement in the manner it was recorded by the petitioner herein. This defect in recording statement has resulted into contradictions in the testimony of Magan Bhana which rendered his testimony vulnerable. In my view, therefore, the learned trial Judge can not be said to have made any unwarranted observations against the petitioner and other Police Officers. The offending observations, therefore, do not require to be expunged from the judgment of the learned trial Judge.

In the event a Police Officer fails in carrying out a proper and honest investigation, it is the trial Judge alone who can bring it to the notice of the competent authority/Government. I am, therefore, of the opinion that the learned trial Judge can not be said to have erred or acted beyond his jurisdiction in directing to forward a copy of the judgment to the District Superintendent of Police and in suggesting that a disciplinary action be initiated against the erring Officers. It can not be said that the learned trial Judge has directed the District Superintendent of Police to hold a disciplinary action against the erring Officers. It is a mere suggestion that in the given circumstances the disciplinary action is warranted, nor do I consider it necessary that even before making such observation, the concerned Police Officer was required to be heard by giving him a special notice. No prejudice will be caused to the petitioner since a disciplinary action is yet to be taken against him and he shall have his defence before the disciplinary authority.

The direction issued in respect of ill-treatment of the accused persons is in consonance with the provisions contained in paragraphs 12 and 14 of the Criminal Manual, and that was the right thing for the learned trial Judge to do. Same also does not call for interference by this court.

In view of the above discussion, the petition is dismissed. Rule is discharged. Interim relief is vacated.

Mr. Yadav requests that the interim relief be extended for a period of four weeks so as to enable the petitioner to approach the higher forum. Request is granted. The interim relief granted to the petitioner shall continue to operate till 24th November, 1998.

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JOSHI